

Frank Stilwell

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From: Charlene Vaughn [cvaughn@achp.gov]**Sent:** Friday, February 13, 2004 6:15 PM**To:** Alan Downer, Bobeck, Ann, Clark, John F. - WDC, Javier Marques; Jay Keithley, John Fowler, NATHPO, 'schamu@sso.org', Valerie Hauser, Andrea Williams; Andrea Bruns, Bambi Kraus, 'Betsy Merritt', Frank Stilwell, Jo Reese, Sheila Burns, Roger Sherman, gsmith@johnstondc.com; jmartin@usetnc.org, jfowler@erols.com**Subject:** ACHP Identification Proposal following the 2/12 TWG Drafting Group meeting

Hello Drafting Committee:

I hope that this e-mail is waiting for you on Tuesday morning and that you have had a wonderful weekend.

The teleconference call-in information is as follows:

Date: Tuesday, February 17, 2004
 Time: 11:00 a.m. until 12:30 p.m. (est)
 Dial-in number: 888-387-8686
 Access No: 7120435, then press #

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Federal Communications Commission
Office of the Secretary

In preparation for the teleconference, I am attaching the ACHP's revised language for *Section IV, Identification and Evaluation*, of the draft FCC Nationwide Programmatic Agreement. While we were unable to reach agreement regarding all aspects of the changes needed to streamline the identification process during Thursday's meeting, I believe that we made significant progress in certain areas. Building upon the points of agreement, John Fowler, Valerie Hauser and I prepared revised language that achieves the following goals.

1. Eliminates the need for surveys for visual effects.
2. Allows applicant to use their discretion regarding the use of qualified professionals when preparing the list of historic properties for visual effects.
3. Limits the sources to be considered when identifying historic properties within the area of potential effect for visual effects.
4. Clarifies the role of Indian tribes and Native Hawaiian organizations in the identification process for visual effects if they agree to consult with applicants.
5. Allows the SHPO/THPO to add properties to the list of identified properties for visual effects when such properties are a) located within the area of potential effect, b) included in the SHPO inventory, and c) meet the National Register criteria.
6. Allows the ACHP to have a role in the resolution of disputes regarding identification and evaluation.

There are obviously other issues that require further negotiation. However, we are hopeful that at the outset of Tuesday's teleconference such issues can be identified and the major concerns clearly articulated. Since we only have until **Thursday, February 19th** to finalize the language that will be submitted to FCC, we would like all parties to be given the opportunity to share their comments and suggest changes that advance the overall goal of improving the eligibility process for telecommunications activities.

Thanks for all the hard work you have put into this task. It has been quite challenging. Nonetheless, I hope that at the end of this process we can all see the benefits of our collaboration.

2/20/2004

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Charlene

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**ACHP Revised Language for Section IV of the draft FCC Nationwide PA
February 13, 2004**

IV. IDENTIFICATION AND EVALUATION

A. In preparing the Submission Packet for the SHPO/THPO or consulting tribes or NHOs pursuant to Section VII of this Nationwide PA and Attachments 3 and 4, the Applicant shall:

1. define the area of potential effect,
2. identify historic properties listed on or eligible for listing on the National Register of Historic Places within the area of potential effects;
3. evaluate the historic significance of the identified properties, as appropriate; and,
4. assess the effects of the Undertaking on Historic Properties.

B. The Applicant, SHPO/THPO, and the Commission, as appropriate, shall apply the following standards when preparing or reviewing the Submission Packet:

1. Waiver of Review for Specific Geographic Areas.

The SHPO/THPO, consistent with relevant State or tribal procedures, may specify geographic areas in which no review is required for direct effects on archeological sites or no review is required for visual effects is required

2. Area of Potential Effects

a. The area of potential effects for direct effects is limited to the area of proposed ground disturbance and the portion of a historic property that will be destroyed or physically altered by the Undertaking

b. The area of potential effects for visual effects will be determined in the following manner:

i. Unless otherwise established through consultation with the SHPO/THPO and consulting tribes or NHOs, the area of potential effect for construction of new facilities is the area from which the tower will be visible.

- A. within a half mile from the tower site if the tower is 200 feet or less;
- B. within $\frac{3}{4}$ of a mile from the tower site if the tower is between 200 and 400 feet; or
- C. within $1\frac{1}{2}$ miles when the tower will be over 400 feet.

ii Should the Applicant determine, or the SHPO/THPO or consulting tribes or NHOs recommend an alternate area of potential effect for visual effects, the Applicant and SHPO may:

- A. Agree to the alternative boundaries; or
- B. Refer the issue to the Commission or the ACHP for resolution, after making a good faith effort to reach a compromise.

C. Identification and Evaluation of Historic Properties for Visual Effects.

1. Applicants shall not be required to conduct surveys when identifying historic properties listed and eligible for listing on the National Register within the area of potential effects for visual effects unless it is identifying sites of religious and cultural significance to tribes.
2. Applicants shall identify historic properties listed on and eligible for listing on the National Register by reviewing the following records, which can be found within the offices of the SHPO:
 - a. properties listed in the National Register;
 - b. properties formally determined eligible for listing in the National Register;
 - c. properties in the process of being nominated to the National Register;
 - d. properties previously determined eligible as part of a consensus determination of eligibility between the SHPO and a Federal Agency or local government representing the Department of Housing and Urban Development (HUD); and
 - e. properties within the State inventory previously determined eligible by the SHPO.
3. Applicants may use the services of Qualified Professionals when identifying historic properties listed and eligible for listing on the National Register at their discretion.

- 4 The applicant shall provide the SHPO a proposed list of historic properties listed and eligible for listing on the National Register based on the foregoing identification steps.
 - a. Within 30 days of receipt of the list, the SHPO may identify additional properties included in the State inventory and located within the area of potential effects that the SHPO determines are eligible for listing on the National Register and such properties shall be added to the list.
 - b. The SHPO may also advise the Applicant that previously identified properties on the list no longer qualify for the National Register and such properties shall be removed from the list.
5. Concurrent with the identification of properties with the SHPO and in accordance with Section XX of this agreement, the Commission or the Applicant, as appropriate, shall consult with the appropriate Indian tribes or NHOs to identify historic properties of religious and cultural significance within the area of potential effects that may be eligible for listing on the National Register.

D Identification and Evaluation of Historic Properties for Direct effects

- 1 Applicants shall consider the properties on the list created pursuant to Section IV. C when identifying historic properties, including buildings, structures, and archeological sites, within the area of potential effects for direct effects that are listed on and eligible for listing on the National Register.
- 2 Applicants shall conduct an archeological survey, in consultation with the SHPO/THPO and consulting tribes or NHOs in the area of potential effect for direct effects.
 - a. A person or persons meeting the Secretary's professional qualifications standards shall conduct all surveys.
 - b. An archeological survey shall not be undertaken when the undertaking is unlikely to cause effects to archeological resources. Any such determination shall be made by a Secretary-qualified archeologist in consultation with the SHPO/THPO, consulting tribes or NHOs, and other consulting parties. Disagreements regarding the necessity for an archeological survey shall be referred to the Commission or ACHP for resolution

3. The applicant, in consultation with the SHPO/THPO or consulting tribes or NHOs, shall apply the National Register criteria (36 CFR Part 63) to properties identified within the APE that have not previously been evaluated for National Register eligibility.

E. Dispute Resolution

Where there is a disagreement regarding the identification or eligibility of a property, and after attempting in good faith to resolve the issue, the applicant may submit the issue to the Commission or refer the matter to the ACHP. The Commission or ACHP shall review the matter in accordance with 36 CFR Part 800.(4).